Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of The Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	MM Docket No. 01-317
Rules and Polices Concerning Multiple Ownership of Radio Broadcast Stations In Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

TO: THE FULL COMMISSION

COMMENTS OF DUHAMEL BROADCASTING ENTERPRISES

Duhamel Broadcasting Enterprises ("Duhamel"), by and through its attorneys, hereby comments upon the *Notice of Proposed Rule Making* adopted on September 12, 2002 and released on September 23, 2002 in the above-captioned proceeding. *Notice of Proposed Rule Making* in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, 00-244, FCC 02-249 (released September 23, 2002). For the reasons set forth herein, Duhamel urges the Commission to adopt rule changes in relaxation of its media ownership regulations so that rural broadcasters such as Duhamel will be permitted to consolidate in order to survive as locally owned, independent broadcasters.

Duhamel welcomes the commencement of this rule making proceeding and is pleased to provide its comments. As an initial matter, Duhamel notes that it is clear from Section 202(h) of the Telecommunications Act of 1996 and the two court decisions of last year that the burden is on the Commission, not on its regulatees, to justify the Commission's media ownership regulations as "necessary in the public interest as a result of competition." Telecommunications Act of 1996, § 202(h); see also *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002), *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002) (vacating cable/broadcast cross-ownership rule and remanding to FCC the decision to retain national television ownership cap based on FCC's failure to demonstrate that the rules were "necessary in the public interest"); *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002), *rehearing denied*, 2002 U.S. App. LEXIS 16619 (D.C. Cir. Aug. 12, 2002) (finding the FCC's eight voices exception to the television local ownership rule arbitrary and capricious).

Duhamel applauds the effort of the National Association of Broadcasters (the "NAB") to place before the Commission a proposal that relaxes the Commission's media ownership regulations. The NAB's proposed presumptive "10/10" standard for permitting television duopolies in all DMAs is fully responsive to the realities that Duhamel continues to face in its half-century effort to provide free, over-the-air television broadcast service not only to the residents of Rapid City, South Dakota but also to sparsely populated areas in Nebraska and Wyoming.

Duhamel is one of the original, pioneering, South Dakota broadcasters. Since its founding in 1953, Duhamel has remained a locally owned family company with its headquarters in Rapid City. Helen S. Duhamel purchased stock in KOTA(AM), Rapid City, South Dakota, during World War II and bought out all the other Rapid City stockholders when they planned to sell the station to a Chicago investor in 1953. The next year she filed an application with the FCC for the second television station in South Dakota. At the current time, Duhamel operates two radio stations serving the Rapid City market as well as several television stations serving substantial, but sparsely populated, areas of South Dakota, Nebraska, and Wyoming. In addition to KOTA(AM), Duhamel is the licensee of KDDX(FM), Spearfish, South Dakota. Duhamel is also the licensee of ABC affiliated full-service broadcast station KOTA-TV, NTSC Channel 3, DTV Channel 2, licensed to Rapid City. KOTA-TV is the source of important local, regional, and national informational and entertainment programming to widespread and sparsely populated areas far from Rapid City. To accomplish this important task, Duhamel operates at considerable cost three satellite stations of KOTA-TV in the Rapid City market and related Class A LPTV and microwave stations. Specifically, at Lead, South Dakota, Duhamel operates satellite station KHSD-TV, NTSC Channel 11 and DTV Channel 10. At Scottsbluff, Nebraska, Duhamel operates satellite station KDUH-TV, NTSC Channel 4 and DTV Channel 7 as well as Class A LPTV station K02NT, NTSC Channel 2. Although Scottsbluff is located outside the Rapid City DMA, Nielsen has assigned KDUH-TV to the Rapid City market for reporting purposes. At Sheridan, Wyoming, Duhamel operates satellite station KSGW-TV, NTSC Channel 12 and DTV Channel 13. KSGW-TV's service is augmented by Class A LPTV station K06JM, NTSC Channel 6 at Gillette, Wyoming. Duhamel's effort to serve these communities/areas requires uninterrupted service over more than 1,300 air miles of 33 separate microwave links. Duhamel with its four television stations defines the Rapid City television market, ranked 175th in the United States. The Rapid City DMA consists of 36 counties, all of which, except for the county that includes Rapid City itself, are classified by Nielsen as "D counties," which places them in the smallest 15% of U.S. counties.

The type of wide area, sparsely populated, rural television broadcast service of which Duhamel has been a pioneer for half a century represents an extraordinary challenge for

Duhamel, particularly in comparison to its non-rural television colleagues. First, the total advertising dollars available to Duhamel in the Rapid City DMA, where it concentrates its efforts, is modest in comparison to the dollars present in a market like New York City. For example, estimated gross revenues for 2001 in the Rapid City television market were only $9,400,000 split among seven commercially operating television stations.[1/] By contrast, 2001 estimated gross revenues in the New York City television market were $1,463,100,000 split among 16 commercially operating television stations.[2/] The Commission can readily see from this comparison that Duhamel and its competitors in the Rapid City market have a relatively modest number of dollars to share (based on an even split, only about $1,342,857 per station) whereas the New York City stations have a huge number of dollars to go around (based on an even split, more than $91,443,750 per station). This difference per station is a staggering factor of 68. The tower structure supporting the KDUH-TV antenna recently fell. It is estimated that the cost of rebuilding the same 2000 foot structure would be on the order of $5,000,000, or more than half of the total 2001 revenues estimated for the Rapid City market.

Not only is Duhamel's income potential extremely limited, it also has to contend with operating costs per household that are substantially higher than those of its non-rural television colleagues. For example, the households served by Duhamel's one primary station, three satellite stations, two Class A LPTV stations and extensive microwave facilities total only 151,060. In comparison, WNBC(TV), a station located in the New York City television market, serves 13,705,410 households, or more than 90 times as many households as Duhamel serves

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[1/] BIA*fn* Financial Network, Investing in Television Market Report 2002, Third Edition.

[2/] *Id*.

with its one primary station and *five* supplementary transmission facilities, not counting the microwave links.[3/]

In addition, to assure continuing coverage of the areas historically served by Duhamel, the company not only has to operate and maintain one primary television station, three satellite stations, two Class A LPTV stations and an extensive microwave network, it will also have to outfit a total of four television stations with a digital transmission capability. A New York City station only has to underwrite digital transmission costs for a single station to serve that market.

To make matters even worse, the Rapid City market is not only subject to high levels of penetration by multichannel video programming distributors ("MVPDs"), including cable and satellite television, it is subject to an unusually high level of out-of-market station watching over satellite delivered television. Cable and satellite providers import distant signals from Denver, New York, Los Angeles, and other urban markets. According to the November 2002 Nielsen Station Index for the Rapid City market, CATV penetration in the market is 64%, and satellite television penetration is 24% for a combined penetration of 87%. Moreover, of those who subscribe to satellite delivered television, 21% regularly watch out-of-market stations since Rapid City is not a "local-into-local" area of service from either DirecTV or EchoStar.

The realities of modest-market-advertising-revenues/high-operating-cost-per-household/ high-MVPD-penetration-fragmentation leave Duhamel and other similarly situated rural broadcasters with only these alternatives:

1. Try to stay independent by continuing to reduce staff and by substituting syndicated programming for expensive locally originated programming;

[3/] Television & Cable Factbook No. 70, 2002 Edition at A-914.

2. Consolidate with other stations in order to add revenue streams and to achieve economies of scale; or

3. Perish.

The Commission has stated that it is concerned about the health of the free, local, over-the-air broadcast industry. *See, e.g., Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order*, 12 FCC Rcd 12809, ¶¶ 27-29 (1997). The obvious solution is to allow television stations, including those in smaller markets, to consolidate not just at the operational level but also at the ownership level. The so-called "risk to diversity" that may be inherent in such an approach is insignificant relative to the risk to diversity when a broadcast station goes dark permanently. It is time for the Commission to recognize that virtually every man, woman and child in America, including those in rural areas, can have access to: hundreds of cable channels for news, information and entertainment, hundreds of satellite television channels for news, information and entertainment, a virtually unlimited number of portals for Internet delivered news, information and entertainment, hundreds of satellite delivered radio channels with news, information and entertainment, local television stations with news, information and entertainment, local radio stations with news, information and entertainment, local and area newspapers with news and information, and unlimited numbers of periodicals with news, information and entertainment. It is also time for the Commission to recognize that the free, over-the-air television and radio broadcast industries, with only a single source of revenues – advertising – are, therefore, the most fragile of all these mass media delivery technologies and that consolidate or vanish are the only marketplace alternatives available to those broadcasters who serve widespread, sparsely populated, rural areas.

The greatest enemy of program diversity is a silent station. The diminution in program diversity which results from a dark station is many fold greater than any theoretical reduction in program diversity that might be ascribed to stations under common ownership. Where the only alternatives are consolidate or perish, the regulatory choice is obvious.

The Commission expresses concern with the potential for loss of “competing viewpoints” when two or more independently owned stations come under the same ownership. However, when one owner owns two or more stations, the owner has a strong, inherent incentive to diversity its entertainment and other programming in order to increase its advertising revenues from new demographics as well as to reduce the risk of cannibalizing its audience, i.e., simply moving the same audience from one station to another. The Commission also worries that the editorials carried by commonly owned stations will only express the same viewpoint. The Commission’s concern is not only theoretical. It is vastly overstated. First, what editorials? Few if any stations now air editorials. Second, many of the editorials aired these days are provided by a variety of guest editorialists and "do not necessarily express the viewpoint of this station." With respect to news, news is news and is supposed to be selected and delivered without bias of any type. The selection of specific news items for coverage is the product of the journalistic discretion of individual news personnel at a station, not generally of a station's ownership.

The government’s eternal quest for maximum program diversity unfairly singles out the broadcast industry. If this quest were truly genuine, logically the government would require cable operators, television satellite operators, and satellite radio operators to place each of their programming channels in separate ownership hands. Why should broadcasters be singled out as the only mass media outlets where ownership diversity is supposed to matter?

If the Commission agrees with Duhamel that more needs to be done to permit consolidation within the broadcast industry, particularly in rural areas, the Commission should state clearly that such consolidation is in the public interest with the intent that the Department of Justice take such finding into consideration if and when it may evaluate particular transactions coming before it. Otherwise, nothing will have been gained by the Commission's actions further relaxing its ownership rules.

Based on the foregoing, Duhamel Broadcasting Enterprises respectfully requests that the Commission further relax its media ownership regulations in ways that would permit Duhamel to consolidate its ownership in the markets in which it is currently operating.

Respectfully submitted,

DUHAMEL BROADCASTING ENTERPRISES

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